Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 24 JANUARY 17, 1990 No. 2/3

This issue contains:

AVAILABILITY OF BOUND VOLUMES

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decision

(T.D. 90–2)

SYNOPSES OF DRAWBACK DECISIONS

The following are synopses of drawback authorizations issued May 1, 1987, to November 16, 1989, inclusive pursuant to Subpart C, Part 191, Customs Regulations; and an approval under Treasury Decision 84–49.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded, and the date on which it was issued.

(DRA–1–09)
Date: December 27, 1989.
File: 221756

JOHN DURANT,
Director,
Commercial Rulings Division.

(A) Company: Air Products & Chemicals, Inc.
Articles: Monoethylamine; diethylamine; triethylamine
Merchandise: Ethanols
Factory: St. Gabriel, LA
Statement signed: April 22, 1988
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Rate forwarded to RC of Customs: New York, August 23, 1989
Revokes: T.D. 85–165–A

(B) Company: Allied Metal Co.
Articles: Aluminum alloy ingots
Merchandise: Silicon metal
Factories: Chicago, IL (2)
Statement signed: March 3, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: Chicago, August 31, 1989

(C) Company: American Chrome & Chemicals Inc.
Articles: Chromium oxide
Merchandise: Sodium dichromate (liquid)
Factory: Corpus Christi, TX
Statement signed: July 28, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, November 6, 1989

(D) Company: American Cyanamid Co.
Articles: Cyasorb UV 3346 in powder and flake form
Merchandise: Cyasorb UV–3346 particles
Factory: Willow Island, WI
Statement signed: June 16, 1989
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, November 6, 1989

(E) Company: American Thread Co.
Articles: Spun polyester thread (yarn)
Merchandise: Polyester fiber
Factories: Rossville, GA; Marble, Marion, Old Fort & Rosman, NC
Statement signed: January 23, 1989
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, October 31, 1989

(F) Company: Anderson Development Co.
Articles: Cyasorb UV 3346
Merchandise: Bis piperidine (BPIP)
Factory: Adrian, MI
Statement signed: May 30, 1989
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, November 6, 1989

(G) Company: BGF Industries, Inc.
Articles: Fiberglass piece goods
Merchandise: Fiberglass yarn
Factories: Cheraw, SC; Altavista, VA; South Hill, VA
Statement signed: June 28, 1988
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, August 25, 1989

(H) Company: Continental Grain Co.
Articles: Pre-mix for poultry and/or livestock feed
Merchandise: Folic acid; d-calcium pantothenate; vitamin B2 (Ribo 272); niacinamide; pyridoxine; thiamine (vitamin B1); vitamin A (650 M)
Factory: Mendota, IL
Statement signed: January 11, 1989
Basis of claim: Appearing in
Rate forwarded to RC of Customs: Chicago, September 1, 1989

(I) Company: Dow Corning Co.
Articles: Trichlorosilane
Merchandise: Silicon metal
Factory: Midland, MI
Statement signed: May 11, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, September 18, 1989

(J) Company: Excel Corp.
Articles: Beef patties; breaded beef steaks; breaded beef steak fingers; bulk ground beef; beef roll-ups with brown and wild rice
Merchandise: Lean trim beef
Factory: Wichita, KS
Statement signed: May 18, 1989
Basis of claim: Appearing in
Rate forwarded to RC of Customs: Los Angeles (San Francisco Liquidation), August 25, 1989

(K) Company: First Brands Corp.
Articles: Plastic sandwich, food storage, and disposer bags
Merchandise: Low density ethylene butene copolymer; low and medium density ethylene hexene copolymers
Factories: East Hartford, CT; Catersville, GA; Rogers, AR
Statement signed: April 28, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, September 18, 1989

(L) Company: Georgia Gulf Corp.
Articles: Vinyl chloride monomer
Merchandise: Ethylene; ethylene dichloride
Factory: Plaquemine, LA
Statement signed: April 10, 1989
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Rate forwarded to RC of Customs: New York, August 31, 1989

(M) Company: Georgia Gulf Corp.
Articles: Phenol; acetone; alpha methyl styrene (AMS)
Merchandise: Isopropylbenezene (Cumene)
Factory: Plaquemine, LA
Statement signed: April 6, 1989
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Rate forwarded to RC of Customs: New York, October 30, 1989

(N) Company: The Goodyear Tire & Rubber Co.
Articles: Plioflex 1500C, 1502, 1510, 1712C, 1027, 1778 and 1028; Pliolite 2108, 5356, and 5356I; LPF 6687A; LPF 6733; VP 106, Kinsic; Geminic; Magnic; Siberic; Johic; W13; 1461C; tires; conveyor belts
Merchandise: Styrene (vinylbenzene)
Factories: Akron & Marysville, OH; Gadsen, Scottsboro & Decatur, AL; Houston, Beaumont & Bayport, TX; Danville, VA; Lawton, OK; Topeka, KS; Union City, TN; Niagara Falls, NY; Pt. Pleasant, WV; Cartersville & Calhoun, GA
Statement signed: June 27, 1989
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, September 1, 1989
Revokes: T.D. 89–81–N

(O) Company: The Goodyear Tire & Rubber Co.
Articles: Tires
Merchandise: Code 567 a/k/a X50S
Factories: Akron, OH; Cartersville & Calhoun, GA; Danville, VA; Gadsden, Scottsboro & Decatur, AL; Lawton, OK; Topeka, KS; Union City, TN; Houston, Beaumont & Bayport, TX; Niagara Fall, NY; Pt. Pleasant, WV
Statement signed: April 19, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, August 25, 1989

(P) Company: Great Lakes Chemical Corp.
Articles: Bromochlorodifluoromethane
Merchandise: Chlorodifluoromethane
Factory: El Dorado, AR
Statement signed: August 7, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: Chicago, October 23, 1989

(Q) Company: Great Lakes Chemical Corp.
Articles: Methyl bromide
Merchandise: Methanol
Factory: El Dorado, AR

Statement signed: November 1, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: Chicago, November 6, 1989

(R) Company: GTE Products Corp.
Articles: Inorganic luminescent materials (phosphors)
Merchandise: Yttrium, europium, terbium, gadolinium, cerium, germanium, dysprosium, lanthanum, and yttrium/europium coprecipitated—all oxides
Factories: Towanda, PA; Troutman, NC; Naugatuck, CT
Statement signed: July 18, 1988
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, November 6, 1989
Revokes: T.D. 82–225–K

(S) Company: Huls America Inc.
Articles: Cyanoacetic acid (CYAD); ethyl cyanoacetate (ECYA); methyl cyanoacetate (MCYA)
Merchandise: Mono-chloroacetic acid (MCA)
Factory: Theodore, AL
Statement signed: May 26, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, October 6, 1989

(T) Company: Kalama Chemical Inc.
Articles: Phenol, nonyl phenol; technical benzoic acid chips; sodium benzoate; potassium benzoate
Merchandise: Benzoic acid, industrial grade
Factory: Kalama, WA
Statement signed: March 21, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: Los Angeles, September 27, 1989

(U) Company: Penndel Petroleum Corp.
Articles: Marine bunker fuel, various grades
Merchandise: No. 6 fuel oil
Factory: Wilmington, DE
Statement signed: May 26, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: Houston, August 23, 1989

(V) Company: Surgikos, Inc.
Articles: Sterilized disposable gowns, packs, headcovers & pads
Merchandise: Disposable packs, surgical gowns, headcovers & pads
Factory: Arlington, TX
Statement signed: January 20, 1988
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, October 30, 1989

(W) Company: Takasago International Corp. (U.S.A.)
Articles: "Pro Russi" lemon-lime flavored isotonic beverage
Merchandise: "Pro russi" isotonic lemon-lime powder base mix
Factories: City of Industry, CA (agent's)
Statement signed: August 16, 1989
Basis of claim: Appearing in
Rate forwarded to RC of Customs: Los Angeles (San Francisco Liquidation), November 16, 1989

(X) Company: Troy Chemical Corp.
Articles: Polyphase P100; polyphase AF1
Merchandise: Crude iodine; propargyl alcohol; butyl isocyanate; DMSO (dimethylsulfoxide)
Factory: Newark, NJ
Statement signed: February 14, 1989
Basis of claim: Used in
Rate forwarded to RC of Customs: New York, September 18, 1989

(Y) Company: Uniroyal Chemical Co., Inc.
Articles: Agricultural chemicals (herbicides, growth regulants, acaricides, fungicides, pesticides, insecticides)
Merchandise: Various chemicals
Factories: Naugatuck, CT; Bay Minette, AL; Geismar, LA; Brea, CA; Gastonia, NC; Painesville, OH; Newport, IN; Dallas, TX; Joliet, IL
Statement signed: April 21, 1986
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, May 1, 1987
Revokes: T.D. 84–80–W

(Z) Company: Warner Lambert Co.
Articles: Cholybar
Merchandise: Cholestyramine resin
Factory: Morris Plains, NJ
Statement signed: June 2, 1989
Basis of claim: Appearing in
Rate forwarded to RC of Customs: New York, October 30, 1989

APPROVAL UNDER T.D. 84–49

(1) Company: Golden West Refining Co.
Articles: Middle distillate oils; residual oils; petro-chemicals; liquified petroleum gas
Merchandise: Crude petroleum; petroleum derivatives
Factory: Santa Fe Springs, CA
Statement signed: October 2, 1989
Basis of claim: As provided in T.D. 84–49

Rate forwarded to RC of Customs: Houston & Los Angeles, October 30, 1989
Revokes: T.D. 85–106–3

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 2, 1990.

The following are decisions of the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(C.S.D. 90–1)

Vessels: Documents purporting to demonstrate the required elements for relief as to lash barges must have been prepared at the time of inspection and departure of the barge from the U.S.

Date: September 19, 1989
File: VES 13–18 CO:R:P:C
110106 BEW

ASSISTANT REGIONAL COMMISSIONER OF CUSTOMS
COMMERCIAL OPERATIONS
SOUTH CENTRAL REGION
New Orleans, Louisiana 70130–2341

DEAR SIR:

This is in reference to applications for relief from vessel repair duties dated September 2, 1987, and October 15, 1987, filed by Central Gulf Lines, Inc., in relation to entry Nos. C14–0001713–8, C14–0001711–2, C14–0001710–4, C14–0001712–0, C14–0001708–8, C14–0001709–6, C14–0001706–2, C14–0001707–0 and C14–0001714–6, dated July 7, 1987, and C14–0004020–5 dated September 15, 1987, respectively, forwarded to this office by memorandum dated March 7, 1989 (VES–13–18–V:O:CO:L GNS).

The entries were filed upon the arrival of the vessel *Acadia Forest*, Voyage 150, and the *S/S Stonewall Jackson*, Voyage 49, at the port of Newport News, Virginia, on July 7, 1987 and September 14, 1987, respectively, whereupon duties were assessed upon the value

of foreign shipyard operations pursuant to section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466).

In a letter dated today, we issued a ruling on the above stated applications. In addition to transmitting the applications for relief, the March 7, 1989, memorandum sought our advice as to whether a penalty case should be set up for "false statements" as to the certificates relating to the outbound voyage of the barges. We have reviewed these documents and in our view a penalty action does not appear to be justified. In any event, this would appear to be breaking new penalty ground by applying a theory that could apply to many cases. We therefore believe that the final call would be that of the Penalties Branch in ORR.

Our review reveals that the documents contain facts concerning the subject barges that appear to have been compiled from records of the company, rather than false statements or misrepresentations with no basis in fact. The deficiency which we find with the subject documents is that the certifications do not comply with the time requirements set forth in the provisions of 19 CRF 4.14(B)(2)(ii) relating to this subject matter.

(C.S.D. 90–2)

Carriers: The transportation of yachts in a non-coastwise-qualified vessel from a U.S. point to a foreign point where the yachts are unloaded and from which they proceed under their own power to a second U.S. point.

Date: August 24, 1989
File: HQ 110280
VES–3 CO:R:P:C 110280 PH
Category: Carriers

MR. REX MARTIN
LAMPE & MARTIN YACHTS, LTD.
3300 Powell Street, Suite 7
Emery Cove Marina
Emeryville, California 94608

Re: Applicability of the coastwise laws to the transportation of yachts in a non-coastwise-qualified vessel from a United States point to a foreign point where the yachts are unloaded and from which they proceed under their own power to a second United States point.

DEAR MR. MARTIN:

This is in response to your letter of May 18, 1989, concerning the applicability of the coastwise laws to the transportation of yachts from Florida to the West Coast of the United States.

Facts:

You state that you need to deliver several United States-owned yachts from Florida to the West Coast of the United States. You state that the only shipping firm with the ability and inclination to perform this task is a Canadian company. You tentatively plan to load the yachts as deck cargo in Florida and have the yacht owners take delivery in Vancouver, Canada. We assume, for purposes of this ruling, that the vessel on which the yachts will be transported from Florida is a foreign-flag or otherwise non-coastwise-qualified vessel. From Vancouver the yachts would proceed under their own power to their respective home ports in California and Washington.

Issue:

May yachts be transported in a non-coastwise-qualified vessel from a United States point to a foreign point where the yachts are unloaded and from which they proceed under their own power to a second United States point?

Law and Analysis:

The coastwise law pertaining to the transportation of merchandise, section 27 of the Act of June 5, 1920, as amended (41 Stat. 999; 46 U.S.C. App. 883, often called the Jones Act), provides that:

> No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States * * * embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. * * *

Recently we have reviewed Customs rulings on the applicability of the coastwise laws to what we have called "dual-mode" movements. We ruled in Customs Service Decision (C.S.D.) 85–9 and confirmed in Treasury Decision 89–13 (54 *Federal Register* 3438, January 24, 1989) that the movement of a vessel on another vessel from a coastwise point to a foreign point or a point on the high seas where the vessel is removed from the carrying vessel and then towed to another coastwise point is considered coastwise trade. The use of a non-coastwise-qualified carrying vessel in such a movement would violate 46 U.S.C. App. 883.

Briefly, the rationale for this position is that the transported vessel is transported between coastwise points (i.e., it is carried part of the way and towed the rest of the way) and part of the transportation is in a vessel. Section 883 provides that no merchandise shall

be transported between coastwise points "or for any part of the transportation" in a non-coastwise-qualified vessel. In a dual-mode (carrying and towing) movement between coastwise points, the moved vessel is transported (i.e., it is carried and towed) between coastwise points and part of the transportation is in a vessel. Therefore, section 883 would prohibit the use of a non-coastwise-qualified vessel in the carrying portion of such a movement.

This position does not prohibit the use of a non-coastwise-qualified vessel to transport a vessel from a coastwise point to a non-coastwise-point from which the transported vessel proceeds under its own power to a second coastwise point. This is so because the transported vessel is not considered to have been "transported" between coastwise points, it is transported only from a coastwise point to a non-coastwise point and proceeds under its own power for the remainder of the movement. We so ruled in rulings dated April 15, 1960; May 4, 1961; and April 10, 1963. This position and these rulings were reviewed in our consideration of the dual-mode movement rule and it was formally stated that Customs did not intend to modify these rulings in its issuance of C.S.D. 85–9 (see 52 *Federal Register* 24170). Thus, this remains Customs position.

Holding:

Yachts may be transported in a non-coastwise-qualified vessel from a United States point to a foreign point where the yachts are unloaded and from which they proceed under their own power to a second United States point without violating the coastwise laws.

(C.S.D. 90–3)

Carriers: Landing in the United States of fish caught by a Mexican sport fishing vessel in Mexican waters or on the high seas.

Date: September 20, 1989
File: HQ 110343
VES–7–03–CO:R:P:C 110343 GV
Category: Carriers

MR. CHARLES S. SINCLAIR
5003 Bristol Road
San Diego, California 92116

Re: Landing in the United States of fish caught by a Mexican sport fishing vessel in Mexican waters or on the high seas.

DEAR MR. SINCLAIR:

This is in response to your letter dated June 26, 1989, in which you request a reconsideration of our ruling to you dated June 7, 1989 (110143 KMF). The aforementioned ruling was issued in re-

sponse to your letter of January 19, 1989, requesting a ruling regarding the proposed use of a Mexican sport fishing vessel and Customs classification of fish caught and landed by such a vessel.

Facts:

In connection with a feasibility study of a foreign sport fishing vessel, you stated that the fishing voyage of a Mexican passenger vessel would commence at a foreign port and the passengers would catch fish in Mexican or international waters. The voyage would terminate in San Diego, California, where each passenger would disembark with the fish he/she personally caught. You inquired as to Customs classification of these fish.

You noted that presently U.S.-flag passenger sport fishing vessels work in Mexican waters, and at times, enter Mexican ports. Subsequently, the passengers disembark at San Diego with their respective catches. Furthermore, you stated that it is understood that there is no duty assessed on the fish so entering the United States.

In rephrasing your original inquiry, you asked "if the fish caught on a foreign flag vessel would be treated distinctly from those fish of identical origin when caught from a U.S. flag vessel."

In our ruling to you (110143 KMF) we held that fish caught by a Mexican vessel outside the territorial waters of the United States will be treated as a product of Mexico. Furthermore, we noted that the vessel would not be permitted to land that fish in the United States.

In your letter of June 26 you state that the analysis presented in our ruling appears formulated around the concept that the fish caught on the voyage are the property of the ship, as though it were a commercial fishing venture. You further state that such is not the case. Each passenger is in Mexico under a tourist visa and will be licensed by the Mexican authorities for sport fishing only. The fish caught are the personal property of each angler upon which the ship has no claim. Upon off-loading at an American port, each angler (passenger) disembarks with his personal property including the fish which he caught during the trip.

You state that American tourists in Mexico engage in sport fishing every day both from shore locations and from deep sea craft operating from Mexican ports. They are also licensed by the Mexican government for sport fishing, and return to the United States with their catch through the Customs inspection stations ashore.

Issues:

1. Whether, for purposes of the Customs laws, Mexico is considered to be the country of origin of fish caught by U.S. anglers on a Mexican sport fishing vessel in Mexican waters or on the high seas.

2. Whether the landing in the United States of fish caught by a Mexican sport fishing in Mexican waters or on the high seas is prohibited by 46 U.S.C. App. 251(a).

Law and Analysis:

In regard to commercial fishing operations it is the position of the Customs Service that the country of origin of fish caught outside the territorial waters of the United States, whether or not caught in a fisheries zone or an exclusive economic zone (EEZ), is considered to be that of the flag of the catching vessel.

We note, however, that in the context of sport fishing activities such as those described above, Customs need not reach such a determination. In view of the fact that the U.S. anglers are importing their catches for their own use, pursuant to 19 U.S.C. 1304(a)(3)(F) such fish need not be marked to indicate a country of origin. Furthermore, pursuant to Subheading 9804.00.55, Harmonized Tariff Schedule of the United States (HTSUS; 19 U.S.C. 1202, as amended) game animals (including birds and fish) imported for noncommercial purposes are not dutiable.

Accordingly, whether Mexico is considered the country of origin of fish caught by U.S. anglers on a Mexican sport fishing vessel in Mexican waters or on the high seas is immaterial. Such fish need not be marked with a country of origin, are accorded duty-free treatment under the HTSUS, and are subject to informal entry.

In regard to the second issue under consideration, pursuant to 46 U.S.C. 251(a) (i.e., the Nicholson Act), no foreign-flag vessel shall land in a port of the United States its catch of fish taken on board the vessel on the high seas (for these purposes, the high seas includes the EEZ), or fish products processed therefrom, or any fish or fish products taken on board the vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products.

A review of the legislative history of the Nicholson Act discloses a Congressional intent to prevent foreign vessels from entering the United States to land their catches after proceeding from a foreign port where they cleared as cargo vessels. This prohibition was designed to afford further protection to the U.S. commercial fishing industry. Sport fishing operations conducted by foreign vessels in foreign or international waters were not contemplated in the formulation of the Nicholson Act. Accordingly, the landing in the United States of fish caught by foreign vessels engaged in such activities is not prohibited by said statute.

Further in regard to the matter of sport fishing voyages, it should be noted that Customs has long-held that the carriage of fishing parties for hire, even if the vessel proceeds beyond U.S. territorial waters and returns to the passengers' U.S. point of embarkation, is considered coastwise trade subject to the coastwise laws (i.e., 46 U.S.C. App. 289, 883), not an engagement in the fisheries. Under the proposal presented, the Mexican sport fishing vessels would not be considered to be engaged in the coastwise trade.

Holding:

1. Fish caught by U.S. anglers on a Mexican sport fishing vessel in Mexican waters or on the high seas and imported for their personal use (i.e., noncommercial purposes) are exempt from country of origin marking requirements pursuant to 19 U.S.C. 1304(a)(3)(F), are nondutiable pursuant to Subheading 9804.00.55, HTSUS, and are subject to informal entry.

2. The landing in the United States of fish caught by a Mexican sport fishing vessel in Mexican waters or on the high seas is not prohibited by 46 U.S.C. App. 251(a).

(C.S.D. 90–4)

Carriers: Vessel repair duty liability of present owner for repair work which may have been accomplished during previous ownership under 19 U.S.C. 1466.

Date: September 20, 1989
File: HQ 110372
VES–13–18–CO:R:P:C 110372 LLB
Category: Carriers

JULIE MARSHALL JOHNSON, ESQ.
MIKKELBORG, BROZ, WELLS & FRYER
1001 Fourth Avenue Plaza
Seattle, Washington 98154

Re: Vessel repair duty liability of present owner for repair work which may have been accomplished during previous ownership under 19 U.S.C. 1466.

DEAR MS. JOHNSON:

This is in response to letters from your firm dated June 9, June 20, July 18, August 17, August 28, and August 30, 1989. The letters concern potential duty liability under the vessel repair statute for repairs which may have been performed during the first six months of an extended absence from the United States by the vessel *Glomar Grand Isle.*

Facts:

The vessel *Glomar Grand Isle* was constructed in the U.S. in 1967 as an oil drilling vessel. A corporate officer of the then owner has provided a written statement relating that the vessel departed the U.S. in 1981, and worked abroad continuously until 1986 at which time it was laid up in Singapore. In 1988, proceedings were held in the High Court of the Republic of Singapore concerning the judicial foreclosure sale of the vessel to the United States Maritime Administration (MARAD). The present owner purchased the vessel from

MARAD on November 1, 1988. Customs was asked for and provided advice regarding planned conversion work on the vessel by the new owner. (Ruling letter 109908, March 16, 1988). The correspondence which is presently under consideration requests clarification of the effect of the ruling of the Singapore Court regarding duty liability on pre-purchase repairs, and, ancillary to that question, confirmation that the new owner bears no responsibility for repairs accomplished under prior ownership.

Issue:

Whether the present owner of a vessel bears any liability for vessel repair duty in connection with repairs which may have been performed under the direction of a prior owner of the vessel, during the first six months of the vessel's extended absence from the United States.

Further, whether duty liability under the vessel repair statute is ultimately enforceable only in an *in rem* proceeding, which *in rem* liability may have been extinguished by virtue of the judicial sale of the vessel in an admiralty proceeding.

Law and Analysis:

Section 1466, Tariff Act of 1930, as amended (19 U.S.C. 1466) provides, in pertinent part, for payment of duty in the amount of 50 percent ad valorem on the cost of foreign repairs to vessels documented under the laws of the United States to engage in foreign or coastwise trade, or vessels intended to engage in such trade.

The Act of January 5, 1971 (Pub. L. 91–654) amended section 1466 to, among other things, exempt from duty consideration any repairs to special purpose vessels (those used for other than passenger or merchandise carriage), which remain continuously outside the U.S. for a period of two years, except for those repairs occurring during the first six months following departure from the United States (19 U.S.C. 1466(e)). The provision was further amended by the Act of October 30, 1984 (Pub. L. 98–573) to extend to all vessels the benefits previously reserved only for "special purpose" vessels. This 1984 amendment is not relevant to the matter presently under consideration, however, given the fact that the *Glomar Grand Isle* last departed the U.S. in 1981.

The statute (section 1466(a), first sentence) by its terms, provides that foreign repairs to U.S. flag vessels:

> * * * shall on the *first arrival of such vessel* in any port of the United States, be liable to entry and the payment of * * * duty * * * (emphasis added).

The meaning of this phrase "first arrival of such vessel" has been the subject of interpretation. In Treasury Decision 75–146(1), it was determined that, regardless of when repairs subject to the duty provisions of the vessel repair statue are *performed*, "* * * liability for

duty is not incurred until a vessel which is subject to the act arrives in a port of the United States thereafter."

Application of this principle to the present circumstances is clear. Since duty liability does not accrue until a vessel *arrives* in the U.S. following foreign repairs, its ownership during the pendency of its absence from the U.S. is not a primary determinant.

The ruling request letter dated June 20, 1989, makes the following statement:

> In reviewing the statute concerning imposition of duty under the Tariff Act of 1930, it appears to us that any liability for duty in [sic] *in rem* and that as such, such *in rem* liability was extinguished by the judicial foreclosure.

Cases are then cited to support the position that the sale of a vessel in an admiralty proceeding is binding on all parties who may have a claim and extinguishes all *in rem* claims.

The Court in the case of *United States* v. *Gissel, et. al.,* 353 F. Supp. 768 (1973), in deciding a case under section 1466 and citing to another case, stated that the previous decision had inferred that the vessel repair statute:

> * * * authorizes an in personam action as opposed to seizure in an in rem action to recover the foreign vessel repair duties. (Citing *Caldwell Shipping Company* v. *United States,* 53 Cust. Ct. 311 (1964)).

Indeed the *Gissel* case, *supra.,* was affirmed on appeal, leaving intact the line of reasoning regarding *in personam* action under section 1466. *United States* v. *Gissel, et. al.,* 493 F. 2d 27, (5th Cir. (1974)), Cert. Den., 419 U.S. 1012 (1974).

Thus, regardless of whether Customs accepted that judicial foreclosure and vessel sale proceedings in admiralty extinguish all claims *in rem,* (which we do not, since the law of admiralty does not control in tariff matters), claims for duty made under section 1466 are, by authority of the above-cited cases, enforceable through *in personam* measures which are unaffected by such acquiescence.

There is no evidence regarding whether any repairs were actually effected during the first six months of the vessel's continuous absence from the U.S. commencing in 1981, and continuing until the present ime. If any such repairs are found to have been performed, however, the current owner will be liable for any duty payment on those repairs, and claims for duty payment are not extinguished by a prior *in rem* admiralty proceeding regarding the vessel.

Holding:

Vessel repair duties do not accrue and no liability for their payment is created, until a vessel subject to the vessel repair statute makes its first arrival in a U.S. port following foreign repairs. The owner of the vessel at the time of arrival is obligated to satisfy duty

liability, notwithstanding the fact that repairs may have been accomplished under prior ownership.

Vessel repair obligations are *in personam* in nature, and the prior *in rem* judicial sale in admiralty of a vessel is of no consequence regarding after-occurring *in personam* duty liability arising under 19 U.S.C. 1466.

(C.S.D. 90–5)

Carriers: An oceanographic research vessel not considered engaged in coastwise laws when transporting scientists, personnel engaged in research, and research samples.

Date: August 23, 1989
File: HQ 110399
VES–3–14 CO:R:P:C 110399 PH
Category: Carriers

WILLIAM N. MYHRE, ESQ.
PRESTON, THORGRIMSON, ELLIS & HOLMAN
1735 New York Avenue, NW., Suite 500
Washington, D.C. 20006–5209

Re: Applicability of the coastwise laws to the use of a non-coastwise-qualified oceanographic research vessel in the collection of samples from sub-tidal and inter-tidal zones on the Alaskan coast to assess the environmental impact of the *Exxon Valdez* oil spill.

DEAR MR. MYHRE:

This is in response to your letter of August 10, 1989, requesting a ruling on behalf of Arctic Sounder Enterprises, Inc., the owner of the *Arctic Sounder,* on the applicability of the coastwise laws to the use of that vessel to assess the environmental impact of the *Exxon Valdex* oil spill.

Facts:

You state that the *Arctic Sounder* is a United States-built and documented oceanographic research vessel which, because it was at one time sold to Canadian owners, is ineligible for use in the coastwise trade. You state that Exxon Shipping, Inc., has contracted for use of the vessel in a "Biological Effects Monitoring Program" funded by Exxon to assess the environmental impact of the *Exxon Valdez* oil spill.

You state that a group of 13 biologists and 5 chemists are living aboard the vessel and using its research facilities. You state that it is planned for the vessel to remain in remote areas for periods of up to 8 weeks during which time the scientists would visit remote tidal regions potentially affected by the oil spill and collect data and sam-

ples from the sub-tidal and inter-tidal zones. You state that the scientists conduct their research in teams. One team focuses on the sub-tidal environment, collecting samples of algae, seaweed, other marine organisms, water, and sediment at depths of 30 to 60 feet. These scientists are equipped with scuba gear and conduct their work primarily by diving from a skiff provided by the vessel.

The second team of scientists focuses on the inter-tidal marine environment, collecting samples of marine life, water and sediment located between the high and low tide lines. This team uses a skiff supplied by the vessel to reach the inter-tidal zone and collects data and samples by diving from the skiff, by wading from shore, or, at low tide, by walking within the inter-tidal zone.

After collection of the samples, the teams return to the vessel with the samples and work in the vessel's laboratories to record pertinent data regarding their activities, to conduct preliminary examinations of the samples, and to preserve the samples by soaking them in Formalin or by freezing them. The samples are picked up from the vessel periodically by helicopter for further study in larger shore-based laboratories.

Approximately 6 hours a day are devoted to the collection and sampling activities and approximately 10 hours a day are devoted to the laboratory work aboard the vessel.

You state that all persons on the vessel are either crew members involved in navigating the vessel or personnel involved in the scientific activities described above. You state that the vessel carries only the scientific personnel, the crew, and the usual supplies and equipment necessary for the research.

Issues:

1. May a non-coastwise-qualified vessel transport scientists who collect and work on the vessel with data and samples from the sub-tidal and inter-tidal zones of the Alaskan coast to, from, and between collection sites in United States territorial waters when the samples are to be used to assess the environmental impact of the *Exxon Valdez* oil spill?

2. May a non-coastwise-qualified vessel transport samples which have been collected from the sub-tidal and inter-tidal zones of the Alaskan coast from the points in territorial waters where they are brought onto the vessel to the points where they are removed from the vessel and transported to shore in a helicopter when the samples are to be used to assess the environmental impact of the *Exxon Valdex* oil spill?

Law and Analysis:

The coastwise law pertaining to the transportation of passengers, the Act of June 19, 1886, as amended (24 Stat. 81; 46 U.S.C. App. 289), provides that:

> No foreign vessel shall transport passengers between ports or places in the United States either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed.

The coastwise law pertaining to the transportation of merchandise, section 27 of the Act of June 5, 1920, as amended (41 Stat. 999; 46 U.S.C. App. 883, often called the Jones Act), provides that:

> No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or monetary amount up to the value thereof as determined by the Secretary of the Treasury, or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States * * * embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. * * *

Under the so-called "First Proviso" to section 883:

> * * * [N]o vessel having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade.

For purposes of the coastwise laws, a point in United States territorial waters is considered a point embraced within the coastwise laws. The territorial waters of the United States consist of the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

For purposes of section 289, "passenger" is defined in section 4.50(b), Customs Regulations (19 CFR 4.50(b)), as "* * * any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business." "Merchandise," as used in section 883, includes any article, including valueless merchandise pursuant to the recent amendment of section 883 by the Act of June 7, 1988 (Public Law 100–329; 102 Stat. 588).

It its interpretation of the coastwise laws with regard to the issues under consideration, Customs has long held that the use of a vessel solely to engage in oceanographic research is not a use in the coastwise trade. We have held that the use of non-coastwise-qualified vessels to engage in oceanographic research, including the transportation of persons participating in the research from, to, and between research sites in United States territorial waters, whether or not the persons participating in the research temporarily leave

the vessels at the research sites, would not violate the coastwise laws. We have held that the collection of marine specimens at the research sites and the transportation of those specimens from the research sites to points in the United States would not violate the coastwise laws. Of course, if such a vessel transported between coastwise points, or provided part of the transportation between coastwise points of, any persons other than the vessel crew and scientists and students engaged in the oceanographic research or any merchandise other than the usual supplies and equipment necessary for that research and/or research specimens or samples, the coastwise laws would be violated.

We believe that this interpretation of the coastwise laws is buttressed by the Act of July 30, 1965 (Public Law 89–99; 79 Stat. 424; 46 U.S.C. App. 441–444, often called the Oceanic Research Vessel Act), as amended, section 3 (46 U.S.C. App. 443) of which provides that "An oceanic research vessel shall not be deemed to be engaged in trade or commerce." This Act, in defining the term "oceanographic research vessel," defines oceanographic research as "* * * including, but not limited to, such studies pertaining to the sea as seismic, gravity meter and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research" (46 U.S.C. App. 441(1)).

The vessel under consideration, having been sold foreign, is prohibited from engaging in the coastwise trade. However, we conclude that the use of the vessel as described, to collect and do laboratory work on data and samples from sub-tidal and inter-tidal zones on the Alaskan coast to be used to assess the environmental impact of the *Exxon Valdez* oil spill, is considered oceanographic research. The transportation of the scientists who collect and work on the data and samples to, from, and between collection sites in United States territorial waters (including sub-tidal and inter-tidal zones) in the vessel under consideration would not violate the coastwise laws. Neither would the transportation of the samples collected from the sub-tidal and the inter-tidal zones from the points where they are brought onto the vessel to the points where they are removed from the vessel and transported to shore in a helicopter violate the coastwise laws. The vessel under consideration would, of course, be prohibited from transporting between coastwise points passengers (i.e., not including the scientists or vessel crew) and/or merchandise other than the samples or the usual supplies and equipment necessary for the research.

Holdings:

1. A non-coastwise-qualified vessel is not prohibited by the coastwise laws from transporting scientists who collect and work on the vessel with data and samples from the sub-tidal and inter-tidal zones of the Alaskan coast to, from, and between collection sites in

United States territorial waters when the samples are to be used to assess the environmental impact of the *Exxon Valdex* oil spill.

2. A non-coastwise-qualified vessel is not prohibited by the coastwise laws from transporting samples which have been collected from the sub-tidal and inter-tidal zones of the Alaskan coast from the points in territorial waters where they are brought onto the vessel to the points where they are removed from the vessel and transported to shore in a helicopter when the samples are to be used to assess the environmental impact of the *Exxon Valdex* oil spill.

(C.S.D. 90–6)

Valuation: The applicability of partial duty exemption under HTSUSA subheading 9802.00.80 to guitar strings from Mexico.

Date: September 13, 1989
File: HQ 555218
CLA–2 CO:R:C:V 555218 GRV
Category: Classification
Tariff No: 9802.00.80, HTSUS

MR. DAVID S. SIMPSON, JR.
JOFFROY CUSTOMS BROKERS, INC.
Nogales Foreign Trade Zone
Nogales, Arizona 85628–0698

Re: Applicability of partial duty exemption under HTSUS subheading 9802.00.80 to guitar strings from Mexico.

DEAR MR. SIMPSON:

This is in response to your letter of December 7, 1988, on behalf of The Martin Guitar Company, requesting a ruling on the applicability of item 807.00, Tariff Schedules of the United States (TSUS) (now subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS)), to guitar strings to be made in Mexico. Samples of the U.S. components and the finished guitar string were submitted for examination.

Facts:

You state that hex core ball ended wire (core wire) and brass wrap wire (wrap wire) of U.S. manufacture, cut to length in the U.S., will be exported to Mexico for assembly into guitar strings. The core wire has microscopic slats (tiny grooves) in it which allows the wrap wire to be received and held permanently to the core wire. The assembly operation entails placing a core wire in the jaws of a winding machine, threading a wrap wire through the loop in the core wire at one end and wrapping the wrap wire onto the core wire to create a guitar string. The other end of the wrap wire is permanently joined to the core wire by the slats. The guitar string is then

removed from the winding machine and put into a cleaning solution, which protects the string against corrosion. The guitar string is then dried on a rack, packaged and returned to the U.S.

Issue:

Whether the wire winding operation constitutes an acceptable "assembly," thereby entitling the guitar strings to the partial duty exemption under HTSUS subheading 9802.00.80 when returned to the U.S.

Law and Analysis:

HTSUS subheading 9802.00.80 provides a partial duty exemption for:

> [a]rticles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting.

An article entered under HTSUS subheading 9802.00.80 is subject to duty upon the full value of the imported assembled article less the cost or value of such U.S. components, upon compliance with the documentary requirements of section 10.24 of the Customs Regulations (19 CFR 10.24).

Assembly operations for purposes of HTSUS subheading 9802.00.80 are interpreted at section 10.16(a), Customs Regulations (19 CFR 10.16(a)), which states that the assembly operations performed abroad may consist of any method used to join or fit together solid components.

Operations incidental to the assembly process are not considered further fabrication operations, as they are of a minor nature and cannot always be provided for in advance of the assembly operation. Examples of operations considered incidental to the assembly process are delineated at section 10.16(b), Customs Regulations (19 CFR 10.16(b)). The first and third examples provide for cleaning and the application of preservation coatings.

In the present case, the description of the foreign operation and an examination of the sample submitted show that the guitar strings to be imported will be eligible for the partial duty exemption available under HTSUS subheading 9802.00.80. The core and wrap wires to be exported are finished/completed fabricated components, the product of the U.S. Once abroad, the core wire is securely wrapped with the wrap wire, such that the two wires are permanently joined together, which constitutes an acceptable means of assembly, within the meaning of 19 CFR 10.16(a). The subsequent application of a cleaning solution to preserve the guitar string constitutes an acceptable incidental operation, within the legal meaning

of 19 CFR 10.16(b). Further, an examination of the sample submitted shows that the exported wires do not lose their physical identity in the assembly operation, and that they are not advanced in value or improved in condition except by assembly operations or operations incidental thereto.

Conclusion:

On the basis of the described foreign assembly operation and after examining the samples submitted, the wire winding operation is deemed to constitute an acceptable assembly operation under HTSUS subheading 9802.00.80, and, therefore, the guitar strings will be eligible for the partial duty exemption under that tariff provision when returned to the U.S., upon compliance with the documentary requirements of 19 CFR 10.24.

(C.S.D. 90–7)

Copyright: Infringement, IBM's copyright for Keyboard Interface Controller AT.

Date: August 22, 1989
File: HQ 731872
CPR–3 CO:R:C:V 731872 SO
Category: Copyright

DISTRICT DIRECTOR OF CUSTOMS
AIR TRANSPORTATION DIVISION
5758 West Century Boulevard, IST 41
Los Angeles International Airport
Los Angeles, California 90045

Re: Copyright infringement—Keyboard Interface Controller AT—Hq. Issuance No. 83–73, effective May 23, 1985—IBM Corp. Registration No. TX 1–434–858, published September 14, 1984

DEAR SIR:

Your memorandum of October 17, 1988, requested a Headquarters decision pursuant to section 133.43(c)(1), Customs Regulations (19 CFR 133.43(c)(1)), concerning infringement of the above referenced copyright recordation.

Facts:

A shipment of 17 cases of AT type personal computer motherboards (261 boards), manufactured in Taiwan, arrived at Los Angeles consigned to Golden Star Technology, Inc. (Golden Star). The shipment was detained by Customs on suspicion of copyright infringement of the IBM Keyboard Interface Controller AT (No. TX 1–434–858). IBM posted the required surety bond and submitted a legal brief in support of their demand that the imported

motherboards be excluded from entry into the U.S. The importer denied infringement and submitted copies of documents which indicate that the motherboards were manufactured under a license granted to PC–Calc Ltd. by Phoenix Technologies Ltd. (Phoenix), and the entire file was sent to Headquarters for a decision on the infringement issue.

Issue:

Would the motherboards imported by Golden Star infringe the above referenced copyright of the IBM Corporation for Keyboard Interface Controller AT?

Law and Analysis:

The basic test for determining whether there has been an infringement of a copyright is whether substantial similarity exists between two works. The appropriate test for determining whether substantial similarity is present is whether an average lay observer would recognize the alleged copy as having been appropriated from the coyrighted work, *Ideal Toy Corp.* v. *Fab-Lu Ltd.*, 360 F.2d 1022 (1966). The substantial similarity test was developed in order to bar a potential infringer from producing a supposedly new and different work by deliberately making trivial or insignificant variations in specific features of the copyrighted work.

Two steps are involved in the test for infringement. There must be access to the copyrighted work and substantial similarity not only of the general ideas but the expression of those ideas as well. The Customs Laboratory examined 2 samples of the imported AT type PC motherboards and found that the keyboard controllers have an identical program each containing 1.42 percent ATKBD33 BIOS IN PLACE and 33.33 percent ATKBD33 BIOS OVERALL. IBM submitted an analysis by Mark P. Kahler, an attorney on the Intellectual Property Law Department of the IBM corporation who has a Bachelor's degree in Electrical and Computer Engineering and who has studied assembly language programming formally. Mr. Kahler feels that there is such an overwhelming similarity between many of the routines or modules of the UNIDENTIFIED CODE and the IBM code, that it can only be concluded that the UNIDENTIFIED CODE was not created independently, but rather, major portions of the IBM code were copied.

The UNIDENTIFIED CODE resides in a read-only memory silicon chip, or ROM, in the imported computer merchandise. The UNIDENTIFIED CODE is intended to be "compatible" with the IBM Personal Computer AT keyboard. IBM examined a sample of the imported motherboard which included a keyboard interface controller ROM containing the UNIDENTIFIED CODE and determined that it provides most of the same functions as does the IBM code. The UNIDENTIFIED CODE has been reviewed in detail and compared with the object code representation of the IBM code. In some cases, only the addresses for some of the instructions are dif-

ferent, while the operation instructions are identical. In other cases, the UNIDENTIFIED CODE disguises its copying by using instructions that, although they appear to be different, are functionally identical to the corresponding IBM instructions.

The IBM keyboard interface controller code for the Personal Computer AT was designed and written between Sept. 1982 and March 1983 by an IBM employee, Dennis L. Moeller. A side-by-side comparison of the routines or modules of the IBM code was made with the corresponding modules of the UNIDENTIFIED CODE. Of the 25 statements in the INTERRUPT HANDLER module of the IBM code, virtually all of them are copied in the interrupt handler module of the UNIDENTIFIED CODE. The INITIALISATION module of the IBM code contains 47 statements of which 38% of these are copied verbatim, and another 17% by the use of equivalant statements. Information on other modules follows:

IBM Module	Number of statements	% Copied verbatim	% Equivalant statements
Receive from keyboard	114	25	30
Trans to PC3 keyboard	82	46	36
Receive PC3 mode	69	43	20
Receive PC1 mode	51	49	47
Trans to PC1 keyboard	25	52	32
Dump diagnostic	59	47	44

IBM obtained their copyright registration for the Keyboard Interface Controller Personal Computer AT on September 5, 1984. It is evident that the party that manufactured the main boards in Taiwan had ample opportunity to analyze the copyrighted work. Even without direct evidence of access to the copyrighted work, the substantial similarity between the works is so striking as to preclude the possibility that the works were arrived at independently. The differences noted appear to us to constitute a deliberate attempt to make minor variations in the imported item while preserving the same functions of the IBM copyright protected program.

The agreement between PC-Calc Ltd. and Phoenix concerning the manufacture of main boards has no bearing on the duty of the Customs Service to determine whether or not an article is an infringing importation. Phoenix cannot give a valid license to PC-Calc Ltd. to manufacture articles which infringe an IBM copyright registration. Only IBM can grant such a license.

Section 602(b) of the Copyright Law (17 U.S.C. 602(b)) provides that, "In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited." Section 603(c) of the Copyright Law (17 U.S.C. 603(c)) provides that, "Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the Customs revenue laws. Forfeited arti-

cles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be; however, the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer has no reasonable grounds for believing that his or her acts constituted a violation of law."

Holding:

We are of the opinion that the imported articles would be prohibited entry into the U.S. as infringing on the rights of the copyright owner. The imported merchandise is subject to seizure and forfeiture (17 U.S.C. 603). However, the district director may allow the return of the imported articles to the country of export, whenever he is satisfied that the importer had no reasonable grounds for believing that his act (of importing the infringing motherboards) constituted a violation of law (19 CFR 133.47). The bond of the copyright owner shall be returned. Copies of this decision may be furnished to all interested parties.

(C.S.D. 90–8)

Copyright: Request concerning permission to return infringing articles to the country of export.

Date: September 15, 1989.
File: HQ 732005
CPR–3 CO:R:C:V 732005 SO
Category: Copyright

U.S. CUSTOMS SERVICE
DISTRICT DIRECTOR OF CUSTOMS
Room 246
304 Canal Street
New Orleans, Louisiana 70130

Re: Copyright infringement—"DOUBLE DRAGON," (Audiovisual)—Headquarters Issuance No. 87–117, effective August 4, 1987—Taito Corporation Registration No. PA 327–710, published April 22, 1987—return to country of export (19 CFR 133.47).

DEAR SIR:

Your memorandum of December 14, 1988, (Case No. 892006–00002) requested a Headquarters decision pursuant to section 133.47, Customs Regulations (19 CFR 133.47), concerning permission to return infringing articles to the country of export.

Facts:

Based on information received, Customs investigated a shipment of 26 printed circuit boards for the popular video arcade game "DOUBLE DRAGON," which originated with Current Marketing (Current), of Woodbridge, Ontario, Canada. The circuit boards were consigned to various consignees in the U.S. The investigation determined that the shipment consisted of 26 sophisticated counterfeit circuit boards. Pursuant to section 133.42, Customs Regulations (19 CFR 133.42), the circuit boards were seized by Customs at Memphis, Tennessee, on August 14, 1988, as infringing the above referenced copyright of Taito Corporation.

Mr. Dominic Flagiello, President of Current, wrote to you in November, 1988, seeking permission to export the boards back to Canada pursuant to 19 CFR 133.47. Mr. Flagiello argued that the circuit boards were purchased and sold as original boards in complete good faith and that they cooperated fully with Customs in its investigation of the authenticity of the boards. He pointed out that his firm has cash flow problems resulting from the seizure and, if the boards are returned, will seek to recover the value of the goods from his supplier. He assured you that he would never again attempt to ship the goods back to the U.S.

You sought the opinion of Gerald A. Dominick, the Customs Resident Agent In Charge, Memphis, Tennessee, with regard to the merits of granting Mr. Flagiello's request. Mr. Dominick, while conceding that the statements in the petition letter filed by Mr. Flagiello are "generally factual," nevertheless recommended that Customs refuse to release the counterfeit boards because, (1) the counterfeit boards are also illegal in Canada and have the potential of causing embarrassment to the Customs Service, and (2) the release of the counterfeit boards may set a precedent which would cause difficulties for other Customs districts. Because you are in doubt as to the proper course of action for Customs to take, you submitted the matter to Headquarters for decision pursuant to 19 CFR 133.47.

Issue:

Should Current be allowed to return the circuit boards to the country of export (Canada) pursuant to 19 CFR 133.47?

Law and Analysis:

Section 602(b) of the Copyright Law (17 U.S.C. 602(b)) provides that, "In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited." Section 603(c) of the Copyright Law (17 U.S.C. 603(c)) provides that, "Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the Customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be; however, the articles may be re-

turned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer has no reasonable grounds for believing that his or her acts constituted a violation of law."

Section 133.47, Customs Regulations (19 CFR 133.47), states that detained articles may be returned to the country of export whenever it is shown to the satisfaction of the district director that the importer had no reasonable grounds for believing that his actions constituted a violation of the Act. If the district director is in doubt as to whether the articles should be returned, the matter may be forwarded to Headquarters for decision. In this regard, we note that the regulation permits a decision to allow the articles to be returned to the country of export to be made by the district director at any stage of the proceedings ("whenever"), even after the file has been submitted to Customs Headquarters for a decision on infringement.

Current is known to Customs as having had previous violations of the copyright and trademark laws, including numerous seizures of articles shipped into the U.S. Given the fact that this shipment consists of sophisticated counterfeit printed circuit boards for the popular "DOUBLE DRAGON" video game of Taito Corporation, there is considerable danger that the boards could be returned to the U.S. at some other port of entry. Despite Current's cooperation in this investigation, we have no way of being assured that the U.S. Copyright Law will not be violated again by the shipment of these same counterfeit circuit boards back into the U.S. Other than the statement by Mr. Flagiello that they acted in good faith and purchased and sold the circuit boards as "original" boards, we have no evidence that the importer had no reasonable grounds for believing his actions constituted a violation of the Act. Furthermore, as Mr. Dominick has noted, there is a further concern that U.S. Customs would be subject to criticism for releasing counterfeit circuit boards into the commerce of Canada, in violation of the copyright laws of that nation.

Holding:

We are of the opinion that Current has not furnished any evidence that they had no reasonable grounds for believing that their act of importing the counterfeit printed circuit boards in question constituted a violation of law. Based on their previous violations and for the other reasons noted, the district director is hereby directed to deny permission to Current to return the imported articles to the country of export. The counterfeit circuit boards currently under seizure are subject to forfeiture and destruction pursuant to 17 U.S.C. 603(c). Copies of this decision may be furnished to all interested parties.

(C.S.D. 90–9)

Marking: Country of origin marking of felt manufactured from South African wool.

Date: September 15, 1989
File: HQ 732359
MAR–2–03 CO:R:C:V 732359 SO
Category: Other; marking

MR. L. H. NOTLEY
MANAGING DIRECTOR
E.V. NAISH LTD.
Wilton Nr. Salisbury SP2 OHB
England

Re: Felt made of south African wool—possible prohibition.

DEAR SIR:

In your letter of April 26, 1989, you requested a Headquarters decision on whether the sanctions of the Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99–440, 100 Stat. 1086, as amended by H. J. Res. 756, Pub. L. 99–631, 100 Stat. 3515 (the Act) would apply to felt manufactured in England from South African wool.

Facts:

Under the Act, the importation of certain South African products, including agricultural products, byproducts and derivatives thereof, is prohibited. The South African wool used in the manufacture of the felt in question is carded (combed) in South Africa on wide machines designed for this purpose. The carded wool fibres are passed through a machine called a tacker which locks the fibres together and forms the wool into a roll 50 yards long by 80 inches wide. The roll has no application in this form, and only has sufficient strength to be transported without damage. It is at this point that you intend to bring the material from South Africa to the United Kingdom for further processing into finished felt.

In England, you will pass the roll between heated steam rollers to consolidate the fibre into a stronger homogeneous mass. Subsequently, the material will be passed through a bath of acid and milled for a number of hours in a milling stock to cause the material to shrink, forming a denser felt. The effect of milling reduces the length of the roll from 50 yards to 30 yards long and the width from 80 inches to 72 inches. The strength and density at this point are substantially changed. The material will then be passed through a drying chamber and then pressed to thickness. A machine like a lawn mower will remove the surface fibre. The felt will then be passed through a decantizing machine which initially pumps steam through the felt and subsequently extracts it. This has the effect of further closing the fibres together and giving the finished material a better feel and surface. A sample will then be taken from the roll

and checked for density, thickness and strength before being passed on to final inspection and packing. Samples of the unprocessed material and the finished felt were submitted.

If Customs decides that the carded and rolled of South African origin undergoes a "substantial transformation" in England, then England would be the country of origin of the finished felt, and the felt would be exempted from the import prohibitions of the Act. You are claiming that the complex processing of the South African wool in England amounts to a "substantial transformation," thus changing the country of origin.

Issue:

Whether wool from South Africa which has been carded and rolled in South Africa and then processed into felt in England undergoes a "substantial transformation" which changes the country of origin so that the sanctions of the Act would not apply to U.S. imports.

Law and Analysis:

The Act prohibits the importation into the United States of any "(1) agricultural commodity or product or any byproduct or derivative thereof [or] (2) article that is suitable for human consumption, that is a product of South Africa * * * " See also Part 545, South African Transactions Regulations [SATR], 31 CFR Part 545, Product Guidelines (31 CFR 545.203). Under section 309 of the Act, the importation into the U.S. of all South African textile articles, including merchandise provided for in Chapters 50 through 63, Harmonized Tariff Schedule of the U.S. (HTS), are prohibited from importation into the U.S. Carded or combed wool is classifiable under items 5105.10 — .40, HTS. Other felt of wool or fine animal hair is classifiable under item 5602.21, HTS. The products in question would also be subject to section 303(a) of the Act, which prohibits the importation of products from South African parastatals. We also note that section 545.414, SATR, (31 CFR 545.414) states that determinations of country of origin for purposes of this part will be made in accordance with normal Customs rules of origin.

The term "country of origin" is defined in 19 CFR 134.1(b) as the "country of manufacture, production, or growth of any article of foreign origin entering the United States." Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" with the meaning of these regulations.

For a substantial transformation to be found, an article having a new name, character and use must emerge from the processing. See *United States* v. *Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267, C.A.D. 98 (1940). The issue before the Customs Court in that case was whether hairbrushes and toothbrushes manufactured in the U.S. by inserting bristles into wooden handles imported from Japan were required to be marked as products of Japan. After careful examina-

tion of the statute and its legislative history, the court concluded that Congress had not intended the marking requirements to continue to apply to an imported article which is ued in the U.S. as a material in the manufacture of a new article having a new name, character and use, and which consequently loses its separate identity in the finished product.

This decision was followed and quoted extensively in *Grafton Spools, Ltd.* v. *United States,* 45 Cust. Ct. 16, 22, C.D. 2190 (1960), in which empty metal spools imported from England and wrapped in the U.S. with inked ribbons to create typewriter ribbons and business machine ribbons were found to have lost their identity in the finished product. The court observed that what the ribbon manufacturers were selling were ribbons, which of course had to be wound on a spool, but it was the ribbon and not the spool which the manufacturer's customers were interested in purchasing.

The Courts and Customs Headquarters have issued numerous decisions concerning the issue of substantial transformation, several of which are relevant to the facts of this case. Of particular significance are two Customs Rulings concerning fish caught within the territorial waters of the Soviet Union, #049721, dated May 23, 1977 and #707570, dated October 11, 1978. In those cases the heads and viscera were removed on the Soviet trawlers, the fish were chilled for preservation and then delivered to a Korean processing plant where they were defrosted, detailed, skinned, filleted and frozen into blocks. The decision held that the fish landed in Korea were substantially changed, and the frozen fish fillets considered to be of Korean origin.

Koru North America v. *United States,* Slip Op. 88–162 (Court of International Trade, decided November 23, 1988), is the most recent judicial decision involving the issue of substantial transformation in the context of 19 U.S.C. 1304. Specifically, the court considered whether the processing of headed and gutted fish in South Korea by thawing, skinning, boning, trimming, refreezing and packaging, changed the name, character or use of the fish so as to effect a substantial transformation and render Korea the country of origin for marking purposes. The court concluded that the processing performed in Korea constituted a substantial transformation because it changed the name of the article from "headed and gutted fish" to "individually quick-frozen fillets" and more importantly, because it vastly changed the fish's character. In this regard, the court noted that while the fish arrived in Korea with the look of a whole fish, when they leave they no longer possess the essential shape of the fish. The court also noted that the fillets are considered discrete commercial goods which are sold in separate areas and markets. The fact that the products also have different tariff classifications was found to be additional evidence of substantial transformation.

After careful review of all of the recent decisions and the facts in this case, we believe that the processing to which the South African wool is subjected in England amounts to a "substantial transformation" of the carded and rolled wool into finished felt. As stated, the Act specifically provides that determinations shall be made in accordance with normal Customs rules of origin. With regard to name, we note that carded or combed wool is being changed to felt. The character and use of the product will also be changed as a result of the processing in England. Carded and rolled wool has no practical application, whereas felt is useful in many applications. Also noted is that fact that carded or combed wool is classified under a different HTS item number than other felt of wool or fine animal hair.

Holding:

We have carefully reviewed this matter and, in accordance with established procedures concerning the Act, have coordinated the decision with the Office of Foreign Assets Control of the Treasury Department (OFAC). We are of the opinion that the processing described above to which the South African wool is subjected in England results in a substantial transformation of the wool into an article having a different name, character or use. Accordingly, the finished felt is considered to be a product of England, where substantially transformed, and the sanctions of the Comprehensive Anti-Apartheid Act of 1986 would not apply to U.S. imports. Assuming your supplier in South Africa is not a parastatal (defined in the Act as an entity owned, controlled, or subsidized by the South African Government), we are of the opinion that the English felt may be imported into the U.S. in unlimited quantities without restriction.

U.S. Customs Service

General Notices

ANNOUNCEMENT OF NEW IMPORTER IDENTIFICATION NUMBERING SYSTEM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of new importer identification numbering system.

SUMMARY: This notice informs all persons in the importing community who transact Customs business that the Customs Service shall use a new Customs assigned importer identification numbering system.

EFFECTIVE DATE: February 8, 1990.

FOR FURTHER INFORMATION CONTACT: Byron Kissane, Import Specialist (202–566–8582).

SUPPLEMENTARY INFORMATION:

The Customs Service has undertaken a project to modernize the importer name, address and number file contained in our Automated Commercial System. A major objective of this project is to provide standardized data and uniformity of input into this file. A part of this project is the establishment of a new Customs assigned importer identification numbering system.

The Customs Service will implement a new Customs assigned importer identification numbering system on February 8, 1990. The new Customs assigned number will be automatically generated via the Automated Commercial System within Customs after an individual or business has made application for such a number on a Customs Form 5106.

The new Customs assigned number will only be available to individuals and businesses which do not possess a valid Internal Revenue Service employer identification number or a Social Security number.

Pursuant to § 24.5, Customs Regulations (19 CFR 24.5), an importer is required by Customs to be identified by a specific number. There are three types of numbers currently used by the Customs Service for this purpose. They are either an Internal Revenue Service employer identification number, or a Social Security number, or a Customs assigned number. Section 24.5 states:

If an Internal Revenue Service employer identification number, a Social Security number, or both, are obtained after an importer number has been assigned by a Customs, a new Customs Form 5106 shall not be filed unless requested by Customs.

Pursuant to 19 CFR 24.5(c), this public notice is to serve as the request by Customs to furnish either an Internal Revenue Service employer identification number or Social Security number for importers who have received a Customs assigned number. The position of the Customs Service is that each person who enters into a Customs transaction using an existing Customs assigned number shall update that identification number by furnishing the importer's Social Security number or Internal Revenue Service employer identification number within 30 days of receipt of such a number. The information should be furnished on a Customs Form 5106.

Each person who engages in a Customs transaction using a Customs assigned identification number issued prior to the new numbering system, must update that identification number by furnishing a Social Security number or Employer Identification number if available. If a Social Security number or Employer Identification number is not available, application for a new Customs assigned number must be made on a Customs Form 5106.

Individual letters have been prepared for those importers identified by our Automated Commercial System as having a continuous bond on file with a Customs assigned number. Because the importer identification number cannot be changed using a bond rider, these importers are encouraged to obtain a new Customs assigned number, if needed, prior to the renewal with their sureties of their continuous bonds. Customs expects a 1-year transition phase to accmomodate all importers during this transition phase, Customs will allow for dual processing of old and new Customs assigned numbers.

All importers that need to obtain a new Customs assigned number (those that do not have an Internal Revenue Service employer identification number or Social Security number) are expected to obtain a new Customs assigned number and request that all old numbers be deactivated.

The format for the new Customs Assigned number is YYDDPP–NNNNN (where YY is the calendar year of input, DDPP is the district and port code, and NNNNN is a sequentially system assigned number).

A false statement contained in a Form 5106 may subject the filer to prosecution under the provisions of 18 USC 1001 or sanctions or penalties under other applicable laws or regulations.

Dated: January 2, 1990.

CAROL HALLETT,
Commissioner of Customs.

[Published in the Federal Register, January 9, 1990 (55 FR 792)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 2, 1990.

The following are documents of the United States Customs Service, Office of Commercial Operations, Office of Regulations and Rulings, has been determined to be of sufficient interest to the public and Customs field offices to merit publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(O.C.O.D. 90–1)

The following document, Customs Directive 4400–13, of December 5, 1989, is a clarification of the revised definition of "fraud" under 19 U.S.C. 1592.

1. *References:*

Title 19, United States Code, Section 1592 Title 19, Code of Federal Regulations, Part 171, App. B Fines, Penalties & Forfeitures Handbook, Chap. FRD Federal Register, Vol. 54, Pg. 36906 (Sept. 6, 1989) Customs Bulletin, Vol. 23, No. 38 (Sept. 20, 1989)

2. *Purpose:*

To clarify the use of the new definitions of "fraud" and "gross negligence" in the mitigation guidelines for violations of 19 U.S.C. § 1592 which are contained in Appendix B to Part 171 of the Customs Regulations.

3. *Background:*

On September 6, 1989, Customs published an amendment to its mitigation guidelines for violations of 19 U.S.C. § 1592 which revised the definitions for "fraud" and "gross negligence." The new definitions became effective on October 6, 1989. Previously, the mitigation guidelines provided that:

> A violation is determined to be fraudulent if it results from an act or acts (of commission or omission) deliberately done with intent to defraud the revenue or to otherwise violate the laws of the United States, as established by clear and convincing evidence.

The Department of Justice requested Customs to consider changing its definition to one which Justice believed was the correct court test. Justice believed that Customs internal mitigation definitions impaired its ability to argue a broader definition in the Court of International Trade, where all elements of the alleged violation, including the degree of culpability were subject to the court's *de novo* review. In 1986, after considering Justice's request and researching the issue, the Customs Ser-

vice published a proposed definition in the Federal Register for public comment, even though such proposal and comment are normally not required for internal mitigation guidelines.

After considering the comments received, a revision to the definition of fraud was published which provides:

> A violation is determined to be fraudulent if the material false statement or act in connection with the transaction was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, as established by clear and convincing evidence.

Although the definition of fraud was revised, Customs did not intend major changes in the handling of 19 U.S.C. § 1592 cases by Customs officers. As Customs stated in the Federal Register, Customs officers will still be required to show that the violator knew that the material statement or act was false or that a material omission had occurred. The Customs Service will also be required to show that an act was done with an intent to deceive, to mislead, or to convey a false impression. The Customs Service will not be required to show that the violator specifically intended to defraud the revenue or violate U.S. laws.

In addition to revising the definition of fraud, the Customs Service revised the definition of gross negligence to conform to the new fraud definition. The revised definition provides:

> A violation is determined to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligations under the statute.

The major difference between the knowledge requirements of the two standards is that gross negligence does not require that a violator knew that there was a falsity. In addition, gross negligence does not require an intent to deceive, mislead or convey a false impression.

4. *Action:*

The Customs Service did not intend to make any major changes in the manner in which the pre-penalty or penalty notices or mitigation decisions are handled in the field. Customs officers should not allege a fraudulent violation unless a material false statement or act in connection with a transaction was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, as established by clear and convincing evidence. Customs officers will be required to show that the violator knew that the material statement or act was false or that a material omission had occurred, and that there was an intent to deceive, mislead or convey a false impression.

5. *Responsibilities:*

Area and District Directors will be responsible for ensuring that the revised definitions are properly applied to penalty cases within their jurisdictions.

Guidance concerning the application of this Directive may be requested from the Chief, Penalties Branch, Headquarters (FTS) 566–8317 or the local Regional/District Counsel.

District Directors, FP&F officers, regional fraud coordinators, Regional/District Counsel, and headquarters OR&R employees may release copies of this document to the public upon request without a Freedom of Information Act request.

The statements made herein are not intended to create or confer any rights, privileges or benefits for any private person, but are intended merely for internal guidance.

CAROL HALLETT,
Commissioner of Customs.

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 12

PROPOSED CUSTOMS REGULATIONS AMENDMENTS CONCERNING THE IMPORTATION OF CHEMICALS SUBJECT TO THE TOXIC SUBSTANCES CONTROL ACT (TSCA).

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations regarding the submission of an importer's certification for Toxic Substances Control Act (TSCA) purposes. It provides when the certification must be submitted, its form, and provides for blanket certifications covering multiple shipments of chemicals subject to TSCA.

These changes are being made pursuant to the request of the Environmental Protection Agency (EPA) which has noted the existence of problems in verifying compliance with TSCA.

DATE: Comments must be received on or before March 12, 1990.

ADDRESS: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2119, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Carole Klein, Other Agency Enforcement Branch (202) 566–7877.
William Nolle, Office of ACS Operations (202) 566–7907.

SUPPLEMENTARY INFORMATION:

Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2612) was enacted by Congress to regulate commerce and protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, and for other purposes. Section 13, TSCA, directs the Secretary of the Treasury, after consultation with the Administrator, Environmental Protection Agency (EPA), to refuse entry into the Customs territory of the United

States of any chemical substance or mixture that: 1. Fails to comply with any rule in effect under TSCA, or 2. Is offered for entry in violation of Sections 5 or 6, TSCA, a rule or order issued under Sections 5 or 6, or an order issued in a civil action brought under Sections 5 or 7, TSCA.

Section 13 further provides that if a chemical substance, mixture or article is refused entry, the Secretary shall notify the consignee of the entry refusal, not release the shipment, except under bond and cause its disposal or storage under such rules as the Secretary may prescribe if the shipment has not been exported by the consignee within 90 days from the date of receipt of the notice of entry refusal.

Section 13 was implemented by Treasury Decision (T.D.) 83–158, published in the Federal Register on August 1, 1983 (48 FR 34734), which added Sections 12.118–12.127 to the Customs Regulations (19 CFR 12.118–12.127). Included therein, as Section 12.121, Customs Regulations (19 CFR 12.121), was a reporting requirement calling for the importer of a chemical substance to certify to the district director of Customs that the chemical shipment is subject to TSCA and complies with all applicable rules thereunder, or is not subject to TSCA. Certification statements are delineated in paragraph (a) of the above regulatory section.

EPA officials have advised us that their investigations have identified problems in the verification of compliance with TSCA requirements on imported chemicals. Such officials have noted that, although the above certification is required to be present at the time of entry, audits conducted subsequent to the entry and release of merchandise requiring a certification have failed to confirm the submission thereof at the time of entry or later.

Customs, at the request of EPA, in order to correct this situation and to better enforce the provisions of TSCA, is herein proposing to amend the Customs Regulations to provide that the TSCA certification must be submitted with the entry and that it must appear on the invoice used in connection with the entry and entry summary procedures for these shipments or, for those entries or entry summaries processed electronically, a certification code transmitted as part of the electronic transmission process. The proposed regulations in this document also provide for the use of blanket certifications by importers who regularly import chemicals, whether or not they are subject to the TSCA.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), Section 1.4, Treasury Department Regulations (31 CFR 1.4), and Section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal

business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.),* it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Imports, Hazardous materials, Explosives, and Freight.

Proposed Amendments

It is proposed to amend Part 12, Customs Regulations (19 CFR Part 12), as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553 and 1624.

* * * * * * *

Sections 12.118 through 12.127 also issued under 15 U.S.C. 2601 *et seq.*

* * * * * * *

2. It is proposed to amend Section 12.121 by revising paragraph (a), redesignating paragraphs (b) and (c) as (c) and (d), respectively, revising the redesignated paragraph (c) and adding a new paragraph (b) thereto. The revised Section 12.121 would read as follows:

Section 12.121 Reporting requirements.

(a) *All chemical substances in bulk or mixtures.* The importer of a chemical substance, imported in bulk or as part of a mixture, shall certify to the district director at the port of entry that the chemical shipment is subject to TSCA and complies with all applicable rules and orders thereunder, or is not subject to TSCA. The importer, or his authorized agent, shall sign one of the following statements:

I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

I certify that all chemicals in this shipment are not subject to TSCA.

The certification, which shall be filed with the district director at the port of entry before release of the shipment, shall appear as a typed or stamped statement on the invoice used in connection with the entry and entry summary procedures.

For those entries or entry summaries processed electronically this statement will be in the form of a Certification Code transmitted as part of the Automated Broker Interface (ABI) transmission. The entry filer will be obligated by this Certification Code to the same extent as if these statements were submitted on entry or entry summary documents.

(b) Blanket certifications. (1) District directors of Customs may, in their discretion, accept "blanket" certifications from importers. In accepting any such certifications, the district director should consider the reliability of the importer and Customs broker.

(2) All "blanket" certifications shall be made on the letterhead of the certifying firm, list the products covered by name and Harmonized System Item Number, identify the foreign suppliers by name and address, and be signed by an authorized person.

(3) Once accepted, a "blanket" certification shall remain valid for one year from the date of acceptance unless sooner revoked for cause by the district director. Separate "blanket" certifications will be required for chemicals subject to TSCA and those not subject to TSCA.

(4) Importers authorized to use "blanket" certifications shall also include a statement on the invoice used in connection with the entry and entry summary procedures for each shipment referring to the "blanket" certification and incorporating it by reference. Such statements need not be signed.

(5) For those entries or entry summaries processed electronically for which a "blanket" certification is on file, this electronic Certification Code will certify that a "blanket" certification is on file.

(c) *Chemical substance or mixture as part of article.* Each importer of a chemical substance or mixture as part of an article shall meet the reporting requirements set forth in paragraph (a) or para-

graph (b) of this section only if required by a rule or order under TSCA.

(d) *Facsimile signatures.* The certification statements in paragraph (a) may be signed by means of an authorized facsimile signature.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: January 2, 1990.

SALVATORE R. MARTOCHE,
Assistant Secretary of the Treasury.

[Published in the Federal Register, January 9, 1990 (55 FR 738)]

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